

**Korcom, Ltd. and Local 1, International Brotherhood of Electrical Workers, AFL-CIO. Case 14-CA-21547**

February 26, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge and an amended charge filed by Local 1, International Brotherhood of Electrical Workers, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint and an amendment to complaint against Korcom, Ltd., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On October 10, 1991, the Respondent filed its answer to the complaint and amendment to complaint. However, on December 16, 1991, the Respondent withdrew its answer. To date, the Respondent has failed to file another answer.

On January 21, 1992, the General Counsel filed a Motion for Default Summary Judgment. On January 27, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Respondent filed an answer, but withdrew its answer on December 16, 1991. The Respondent's withdrawal of its answer has the same effect as a failure to file an answer.<sup>1</sup>

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, an Iowa corporation, at its facility in West Des Moines, Iowa, has been engaged in the installation of commercial telephone systems and related products. During the fiscal year ending March 31, 1991, the Respondent, in the course and conduct of its business operations performed services valued in excess of \$50,000 in States other than the State of Iowa. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. Recognition**

1. In about July or August 1990, the Respondent and the Union pursuant to Section 8(f) of the Act, executed an agreement which is effective by its terms from August 1, 1989, to July 31, 1992.

The unit of Respondent's employees covered by the collective-bargaining agreement is as follows:

All servicemen who are engaged in installation, operation and service work in connection with telephone, radio, television, recording, voice, sound and vision production and reproduction apparatus, equipment and appliances used for domestic, commercial, education and entertainment purposes, but excluding all other employees, clerical employees, guards and supervisors as defined by the Labor Management Relations Act, 1947, as amended.

This constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

During the term of the agreement, based on the principles established in *John Deklewa & Sons, Inc.*, 282 NLRB 1375 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), *cert. denied* 488 U.S. 889 (1988), the Union has been, and is the limited exclusive collective-bargaining representative of the unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

<sup>1</sup> See *Academy of Scientific Hair Design*, 300 NLRB No. 92, slip op. at 2 (Nov. 23, 1990); *A. J. Shirk Roofing Co.*, 300 NLRB No. 54, slip op. at 2 (Oct. 19, 1990); *Maislin Transport*, 274 NLRB 529 (1985).

### B. Refusal to Bargain

#### 1. Failure to provide information

On about June 24, 1991, the Union, in writing, requested the Respondent to furnish the Union with the following information:

a full report of all employees who worked for your company in this local union's geographical area doing work covered by our collective-bargaining agreement, and number of hours worked, hourly rate paid, and total monies earned. Also, to determine lead pay and foreman pay, what jobs were worked and how many on each job, and who, if any, got foreman and lead pay?

This information requested by the Union is necessary for and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative.

Since about June 24, 1991, the Respondent has failed and refused to furnish the Union this information, and thereby has violated Section 8(a)(1) and (5) of the Act.

#### 2. Failure to abide by terms of collective-bargaining agreement

Commencing in December 1990, and continuing to date, the Respondent has failed to comply with the terms of its collective-bargaining agreement with the Union by the following acts and conduct:

1. Failing to pay contractually required wage rates.
2. Failing to make contributions to the Union for the fringe benefits set forth in the agreement to wit, the National Electrical Benefit Fund.

Prior to February 5, 1991, the Union had no knowledge of the Respondent's failure to comply with these contractual terms in December 1990 and January and February 1991.

These subjects relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the above acts and conduct of failure to abide by the terms of the collective-bargaining agreement without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct and the effects of such acts and conduct. The Respondent thereby has violated Section 8(a)(1) and (5) of the Act.

### CONCLUSIONS OF LAW

By its failure on and after June 24, 1991, to provide the Union the relevant information it requested and by its failure commencing in December 1990 to pay employees contractually required wage rates and contributions to the Union for the National Electrical Benefit Fund as required by its collective-bargaining agreement with the Union, the Respondent has failed and refused to bargain collectively with the representative of its employees and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(2), (6), and (7) of the Act.

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to continue in full force and effect its collective-bargaining agreement and to make whole unit employees for its failure to adhere to the terms of that agreement relating to wages in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682, 683 (1970). We shall also order the Respondent to make whole unit employees by making contributions to the National Electrical Benefit Fund as provided in the collective-bargaining agreement with the Union. The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make these payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>2</sup>

We shall also order the Respondent to provide the Union with the requested information necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of unit employees.

### ORDER

The National Labor Relations Board orders that the Respondent, Korcom, Ltd., West Des Moines, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

<sup>2</sup> Because the provisions of employment benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts to the Union for the National Electrical Benefit Fund in order to satisfy our "make whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

(a) Refusing to bargain collectively with Local 1, International Brotherhood of Electrical Workers, AFL-CIO, the exclusive representative of its employees in the bargaining unit, by failing and refusing to continue in full force and effect all the terms and conditions of employment of its collective-bargaining agreement with the Union by failing to pay contractually required wage rates and failing to make contractually required contributions to the Union for the National Electrical Benefit Fund.

(b) Failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Give full force and effect to the collective-bargaining agreement with Local 1, International Brotherhood of Electrical Workers, AFL-CIO, and make whole unit employees for the Respondent's failure to adhere to the terms of that agreement relating to contractually required wage rates and contractually required contributions to the Union for the National Electrical Benefit Fund.

(b) On request, furnish the Union with information that the Respondent has failed to furnish and that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the bargaining unit employees.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in West Des Moines, Iowa, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places

where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 1, International Brotherhood of Electrical Workers, AFL-CIO as the exclusive collective-bargaining representative of our employees.

WE WILL NOT fail and refuse to continue in full force and effect the terms of the collective-bargaining agreement with the Union by failing to pay contractually required wage rates and by failing to make contractually required contributions to the Union for the National Electrical Benefit Fund.

WE WILL NOT fail and refuse to furnish information requested by the Union that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect our collective-bargaining agreement with the Union and make whole unit employees for failure to adhere to the terms of that agreement by paying contractually required wage rates and making contractually required payments to the Union for the National Electrical Benefit Fund and reimbursing our unit employees, plus interest, for any lost wages and any expenses ensuing from our unlawful failure to make payments to the Union for the National Electrical Benefit Fund.

WE WILL, on request, furnish the Union with information necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of employees in the bargaining unit.

KORCOM, LTD.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."